

Terms for Use of the Online Services Provided by Kelvion Holding GmbH

Version: May 2018

English

1. Applicability of the Terms for Use

1.1 The Website is an Internet portal (hereinafter "Portal") provided by Kelvion Holding GmbH (hereinafter "Kelvion") for the configuration of Kelvion products, in particular, but not limited to heat exchangers, by means of an online product configurator or an offline program, provides via download (together "Configurator").

1.2 In addition to commercial sellers, the Portal can also be used by interested parties of all kinds as well as by potential end-customers (together "Customers"). The Portal can be used by Customers who only visit and use the Portal without registration ("Non-registered Customers"), but also by Customers who register as Customers of the Portal ("Registered Customers"), whereas the Registered Customers can use additional features of the Configurator.

1.3 With regard to the use of the Portal and the Configurator, these Terms for Use shall apply to the entire business relationship between all Customers and Kelvion.

1.4 The Customer shall bear its own costs, which incur for the use of the Portal, such as its own Internet access or for the appropriate hard- and software (for this see Section 4).

1.5 Kelvion does not acknowledge any General Terms and Conditions of the Customer which are contrary to these Terms, deviate from statutory provisions, or amend these Terms, unless Kelvion has explicitly consented to their applicability. In any event, this requirement of consent also applies in case Kelvion provides the service without reservation or accepts payments in full knowledge of the existence of General Terms and Conditions of the Customer.

2. Registration for the Portal and Use of it

2.1 In order to become Registered Customers, Customers can register online with Kelvion via the Portal. Non-Registered Customers can also use the Portal with limited functions. In case a Customer complies with the requirements set forth in these Terms for Use, acknowledges these Terms for Use as binding, stores its data in the Configurator of the Portal, and Kelvion consents to the participation of the Customer in the Portal, Kelvion admits the Customer as Registered Customer of the Portal. Kelvion reserves its right to refuse the registration in individual cases.

2.2 By registering and giving its consent, the Registered Customer authorizes Kelvion to collect, process, and use the data provided when registering for the Portal for the purpose of its participation in all activated functions of the Portal, in particular, but not limited to the Configurator, as well as for the communication with Kelvion and for the purpose of giving or accepting declarations of intent to Kelvion and/or from Kelvion (jointly referred to as "Business Purpose"). Furthermore, the Registered Customer authorizes Kelvion to transmit its name, address, and other contact details to third parties, insofar as this is necessary for the Business Purpose. The registration and admission to the Portal takes place by issuing a user name and a password. Any and all data of the Registered Customer are

exclusively collected, processed, and used for the Business Purpose, in particular, but not limited to, the processing of legal transactions as well as for the operation of the Portal, including the Configurator. The Registered Customer can notify Kelvion of the revocation of such authorization in writ-ten form at any time. The statutory authorizations remain unaffected hereof.

2.3 Kelvion is entitled to discontinue the operation of the Portal at any time, either entirely or in parts. Furthermore, Kelvion is entitled to modify or update the Portal at any time. The Customer does not have a right to access to the Portal as Registered Customer. Kelvion reserves its right to withdraw the admission of the Registered Customer to the Portal in case of false data, contraventions or breaches of contract, or in case of misuse.

2.4 The Registered Customer identifies itself by means of its user name and its password. Kelvion assigns the user name and the password to the Registered Customer after the registration and admission. The users of a Registered Customer who are allowed to use the Portal for the Registered Customer in the name and in the authority of the Registered Customer are "Authorized Users". The Registered Customer shall notify Kelvion without delay,

- a) if its access data have been used without authorization or if there is an indication that a third party has gained knowledge of the access data and
- b) in case employees with access authorization have left the company of the Registered Customer or are no longer authorized to use the Portal for other reasons.

3. Conclusion of Purchase Contract

3.1 The presentation of the Portal and of the Configuration on the websites and the generation of product data and price information with the Configurator on the website do not constitute a binding offer by Kelvion. Likewise, the presentation of Items on the Portal does not constitute a binding offer of Kelvion. In fact, the Configurator provides the Customer with the possibility to configure Items, determine prices, and generate data sheets and price information for the Items without engagement.

3.2 The Customer can send a non-binding request for an Item generated with the Configurator and the therewith generated price information to a company of the Kelvion Group. The concerned company of the Kelvion Group will examine the non-binding request of the Customer and will send to the Customer a draft of a purchase agreement (offer) in text form, as the case may be in the form of a "delivery confirmation", to the email address of the Customer given in the Portal. However, Kelvion and the other companies of the Kelvion group are not obliged to transmit such a draft of a purchase contract. The name of the selling company of the Kelvion group will be specified in the purchase contract. The purchase contract concerning the Item is concluded by the Customer accepting the offer made by Kelvion in conformity with the provisions of the purchase contract and the underlying General Sales Conditions of the Kelvion Group.

4. Technical Access Requirements

4.1 As a Customer's obligation and as part of its own responsibility, the Customer undertakes to create in its sphere the conditions for the exchange of data with the Portal by having and maintaining the suitable terminal device at its disposition. This includes in particular the deployed hardware and operating system software, the connection to the Internet, and the latest browser software.

4.2 The details of the necessary Customer obligations are defined in the technical specification, as amended from time to time, which is held available on the Website of the Portal.

4.3 In case of any further development of the Portal and the Configurator, it is incumbent on the Customer to carry out the necessary adjustment measures of its IT infrastructure after having been accordingly informed by Kelvion.

4.4 The Customer shall take the necessary measures to safeguard its systems, in particular, to use the current security settings of the browser and the latest protective mechanisms to avert malware.

5. Industrial Property Rights

5.1 With regard to any and all contents and work of the Portal, the following copyright notice shall apply: © Kelvion Holding GmbH, Bochum (Germany) 2018. All rights reserved. Text, pictures, graphics, sound, animations, and videos as well as their arrangement on the Portal are protected by copyright and other protective laws.

5.2 The Customer acknowledges that the database of the Configurator constitutes a database work and/or a database within the meaning of Sections 4 (2), 87a (1) German Copyright Act (Urhebergesetz - "UrhG") Any and all associated computer programs are protected under Sections 69a et seq. UrhG, any and all manuals and documentation as well as the work provided are protected by Section 2 UrhG.

5.3 Any third-party rights to the protected work remain unaffected.

5.4 Any and all signs and logos presented on the Portal are legally protected and may not be published or used in any other way without the prior consent of Kelvion and/or its licensor. Likewise, any and all other brands or trademarks referred to on the Portal which are possibly protected by third parties are subject to the provisions of the applicable trademark laws and rights of ownership of the respective registered owner without restrictions. To be specific, the mere mentioning does not mean that such brands or trademarks are not protected by third party rights.

5.5 Texts, pictures, graphics, and videos as well as their arrangement on the Portal are protected by copyright and other protective laws. Rights for Use are only granted to the extent and as long as this is necessary for the lawful use of the Portal in compliance with these Terms for Use. Furthermore, the content of the Portal may not be copied, disseminated, modified or made available to third parties for commercial purposes. This also applies to its integration into external websites and online services as well as to the storage or copying into data banks and on data carriers.

6. Obligations of the Customer

6.1 When using the Portal, the Customer must not:

- a) violate any applicable laws or public moral with its usage behavior;
- b) infringe any industrial property rights, copyrights, and other property rights;
- c) transmit con-tents containing viruses, so called Trojan horses, or other programs which could damage software.

6.2 Kelvion is entitled to block the access of a Customer to the Portal at any time, in particular in case the respective Customer is in breach of its obligations set forth in these Terms for Use.

7. Nondisclosure

The Registered Customer undertakes to treat the access data to the Portal with strict confidence and to refrain from enabling third parties to gain knowledge. In case of a disclosure to its own employees, the Registered Customer shall also oblige its employees to maintain secrecy.

8. Scope and Limits of the Performance, Availability, Liability, Links

8.1 The performances of the Configurator provided to the Customer with-in the scope of the Portal and the contents delivered to the Customer within the scope of the Configurator are determined in these Terms for Use and in the notes provided in the Portal.

8.2 Any statements and explanations by Kelvion concerning the Configurator in advertising materials, on websites and in the documentation, are solely a description of the design and construction and shall not be deemed to be a guarantee or contractual warranty of any feature.

8.3 When choosing and maintaining the contents of the Configurator, Kelvion will act with ordinary care. Kelvion continuously maintains the data and the prices; however, in this regard, Kelvion depends on the provision of accurate information by third parties. The Customer is held to perform a plausibility check for the contents with regard to the intended use. However, Kelvion cannot guarantee the completeness, accuracy, and topicality of the contents.

8.4 Kelvion seeks to continuously adapt the Portal to the latest requirements. Therefore, Kelvion reserves its right to make changes to adapt the Portal to the current state-of-the-art, to make modifications for the purpose of optimizing the Portal, e.g. to improve the user-friendliness, as well as modifications of the contents, provided that the latter is necessary to remedy defects, for updating or completion purposes, or in order to optimize the programming techniques, or for licensing reasons.

8.5 Kelvion makes an effort to continuously maintain access to the Portal; however, Kelvion does not guarantee the availability of the Portal and the faultlessness and accuracy of the contained information.

8.6 Kelvion tries its best to keep the Portal free from viruses but does not guarantee the absence of viruses. Prior to downloading information, software, and documentation, the Customer shall ensure the existence of appropriate safety measures and virus scanners for its own protection and in order to prevent viruses on the Portal.

8.7 Kelvion and its statutory representatives and vicarious agents do not assume any liability or guarantee for the topicality, content correct-ness, completeness, and any other quality of the links to other web-sites which are provided on this website ("External Links") which are directly or indirectly mentioned on the Portal. Kelvion is not responsible for the content of a website which can be reached via such an External Link. Unless stated otherwise, Kelvion does not support these other websites and therefore explicitly distances itself from any and all contents presented on these sites. This declaration applies to any and all External Links to external websites contained on the Portal and to any and all contents of these websites to which these External Links lead to.

9. Liability for Damages and Reimbursement of Expenses

9.1 Any and all claims for damages and reimbursement of expenses of the Customer (hereinafter "Claims For Damages"), irrespective of the legal grounds (breach of contractual obligations, contract, tortuous act, etc.) shall be excluded. This shall not apply to

- a) Claims For Damages of the Customer based on loss of life, bodily harm, injury or illness caused by culpable conduct,
- b) Claims For Damages resulting from an intentional or grossly negligent breach of duty by Kelvion, its statutory representatives or vicarious agents,
- c) Claims For Damages by reason of a liability under the Product Liability Act [Produkthaftungsgesetz] and
- d) Claims For Damages due to a breach of essential contractual obligations (cardinal obligations).

Essential contractual obligations are contractual obligations which must be fulfilled in order to duly execute the contract; accordingly, the Customer generally relies and may rely on the compliance with these obligations. In case of a breach of essential contractual obligations, Kelvion shall only be liable for foreseeable damages typical of the contract, unless the Claims for Damages of the Customer are based on loss of life, bodily harm, injury or illness, or on intent or gross negligence.

9.2 The restrictions regarding the exclusion and limitation of liability set forth in Subsection 1 shall also apply to the benefit of the statutory representatives and vicarious agents of Kelvion, in case the Customer asserts any claims directly against them.

9.3 The above regulations do not lead to a change of the burden of proof to the disadvantage of the Customer.

9.4 This liability regulation does not apply to damages which relate to a business contact between the Retailer and a company of the Kelvion Group concerning any possibly exchanged goods or services (such as a liability for defects, liability, product liability); such liability shall be governed by the General Sales Conditions of the Kelvion Group, as amended from time to time, which are used by the companies of the Kelvion Group.

10. Data Privacy

The Customer's declaration of consent with regard to the data protection laws and the rules concerning data privacy which are published on the Portal apply.

11. Modifications of the Terms for Use

The Registered Customer is notified of any and all amendments or additions of these Terms for Use by means of a notification in written form. The amendments or additions of the Terms for Use shall be deemed to be approved, if a Registered Customer does not raise an objection in written form within two months after the notification. Kelvion undertakes to make a specific reference to this consequence in the notification. In case a Registered Customer objects to the amendment or addition, its participation in the Portal can be terminated by means of a contractual notice of termination pursuant to Section 13.2 of the Terms for Use. By giving its declaration of consent when visiting the Portal, the Non-Registered Customer agrees to the respective latest Terms for Use in each case.

12. Right of Use of the Customer

12.1 In compliance with these Terms for Use, the Customer is granted the simple, non-exclusive, non-assignable right to use the Portal, which is restricted to the term of the usage agreement, in particular to use the Configurator and the database forming the basis of the latter, the documents retrieved by individual fetch, including their documentation, hand books and other information, as well as the contents of the Configurator for itself and for the entitled users determined by contract for their own purposes. The term "Document" within the meaning of this Section designates the pages presented in the browser in each case and the hard copies of the pages.

12.2 The right of use entitles to research and to read access, to downloading and storage of a document on the computer of the Customer or of the entitled user as well as to the printing of the Document. The Customer is entitled to use the (non-binding) technical data generated with the Configurator for the design of its installations and to transmit them to third parties who are involved in the respective application/task. Any systematic, automated retrieving of documents, any preparation of systematic collections consisting of retrieved Documents, any systematic transmission of Documents, or making such Documents systematically available to third parties is inadmissible.

12.3 Kelvion is entitled to take technical measures to prevent any use exceeding the admitted scope, in particular by installing a corresponding access blocking program. The Customer may not use any appliances, products or other means serving the purpose to circumvent or over-come the technical measures taken by Kelvion. In particular, the Customer is not entitled to use any Web crawler programs, spider programs, meta search engines or comparable technologies, which fetch contents from the database in an automated manner. In case of any misuse, Kelvion is entitled to immediately block the access to the Portal. Further rights and claims of Kelvion, in particular, but not limited to, the right to terminate for cause without notice as well as claims for damages remain unaffected.

12.4 The Customer is obliged to notify the Authorized Users of the preceding provisions and to ensure their compliance.

13. Termination

13.1 The Customer can terminate the contractual relationship in written form to the attention of Kelvion at any time without any period of notice.

13.2 Kelvion can only give a contractual notice of termination without reasons with a notice period of four weeks.

13.3 Kelvion is entitled to a termination for cause and without notice with immediate effect. In particular, a good cause shall be a serious breach of these Terms for Use by the Customer by culpable conduct as well as a case of material misstatements.

13.4 Kelvion is entitled to terminate the contract with the Registered Customer subject to a notice period of one month in case the Registered Customer has not used the Configurator for more than one year via its Customer account. The notice of termination requires at least text form that is to say a notice of termination by email complies with the written form requirement. In case the Registered Customer does not object to the notice of termination in written form within 4 weeks, Kelvion will delete the account of the Registered Customer.

14. Governing Law, Jurisdiction, Severability Clause

14.1 The laws of the Federal Republic of Germany shall apply, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (UN Sales Law / CISG).

14.2 Insofar as the Customer is an entrepreneur, a public legal entity or a special fund under public law, the following place of venue shall be deemed to be agreed: Exclusive place of venue for any and all disputes arising out of or in connection with the contract between Kelvion and the Customer shall be the seat of Kelvion. This shall also apply, if the Customer relocates its residence or usual whereabouts abroad or in case the Customer's usual whereabouts are not known at the time the action is brought. Kelvion is also entitled to take legal action against the Customer at the Customer's place of general jurisdiction or before any other competent court.

14.3 Should any provision of the Contract concluded with the Customer be or become invalid, either partially or entirely, the validity of the other provisions shall remain unaffected hereof.